

## **REMARKS**

The present response accompanies a Request for Continued Examination (RCE). Claims 1, 2, 4-11, and 38-46 are pending in the present application. Independent claims 1 and 38 have been amended to more clearly describe the configuration of the adjustable orthopedic tool. New claim 47, which incorporates the subject matter of allowable claim 43 and base claim 38, has been added. Claim 40 has been canceled without prejudice. After entry of the foregoing amendments, claims 1, 2, 4-11, 38-39, and 41-47 will be pending in the present application.

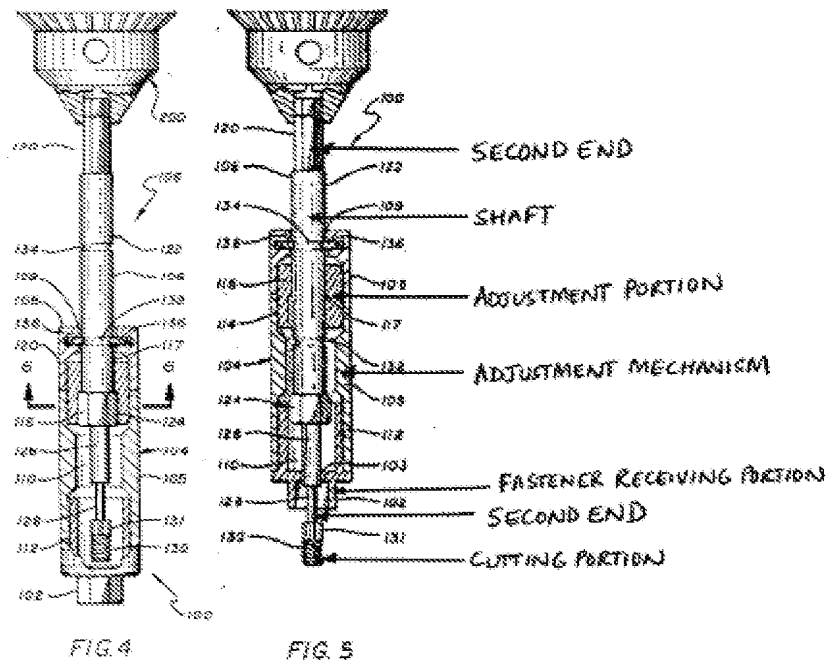
Claims 1-2, 4-7, and 38-42 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,255,485 (“Lemke”). Claims 8-11 and 43-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Applicant appreciates the recognition of allowable subject matter. However, claims 8-11 and 43-46 have not been rewritten because Applicant respectfully submits that their respective base claims are also allowable. Applicant respectfully submits that the Office Action fails to establish a *prima facie* case of anticipation. An anticipation rejection must meet all limitations of the claims.

### ***Independent Claim 1***

Applicant respectfully submits that Lemke does not teach or suggest the combination of claim elements as recited in independent claim 1. Independent claim 1 recites, in pertinent part, “1) a shaft comprising: . . . c) an adjustment portion comprising external threads . . . and 3) an adjustment mechanism mounted on the adjustment portion of the shaft; the adjustment mechanism comprising internal threads adapted to engage the external threads of the adjustment portion of the shaft such that the adjustment mechanism can move along a longitudinal axis of the shaft by being rotated with respect to the adjustment portion of the shaft.”

The Office Action characterizes the drive shaft (106), the bushing (116), and the casing (104) of Lemke as corresponding respectively to the shaft, the adjustment portion, and the adjustment mechanism as recited in claim 23. Applicant respectfully disagrees. As shown below in Figures 4 and 5, bushing (116) – which the Office Action identifies as the adjustment portion – is not part of the shaft (106) as recited in claim 23. Bushing (116) is

disengageable from shaft (106) as the shaft (106) moves from a retracted position in the casing (104) to an extended position in the casing (104). (See Lemke 7:47-8:2 and Figures 4-5).



Further, Lemke does not teach or suggest “the adjustment mechanism comprising internal threads adapted to engage the external threads of the adjustment portion of the shaft such that the adjustment mechanism can move along a longitudinal axis of the shaft by being rotated with respect to the adjustment portion of the shaft.” As shown above in Figures 4 and 5, the casing (104) is moved along the longitudinal axis of the shaft (106) by disengaging the bushing (116) from the shaft (106) and sliding the casing (104) along the shaft (106). Lemke does not teach or suggest external threads on the shaft (106) that engage internal threads on the casing (104) such that the casing (104) can move along the longitudinal axis of the shaft (106) by rotating around the shaft (106).

Thus, Applicant respectfully submits that independent claim 1 patentably defines over Lemke and is allowable. As claims 2 and 4-11 ultimately depend from claim 1, Applicant respectfully submits that claims 2 and 4-11 likewise define over Lemke and are allowable. Applicant’s reliance on the patentability of claim 1 for the patentability of claims 2 and 4-11 is not to be construed as Applicant’s admission of Examiner’s assertions regarding claims 2

and 4-11, or as Applicant's admission that these claims are not novel and unobvious on their own merits.

***Independent Claim 38***

Independent claim 38 of the present application recites, in pertinent part, "*1) a shaft portion comprising: . . . c) an adjustment portion comprising external threads . . . and 3) an adjustment mechanism mounted on the adjustment portion of the shaft, the adjustment mechanism comprising: a) a first sleeve having inner threads configured to engage the external threads of the adjustment portion of the shaft such that the adjustment mechanism can move along a longitudinal axis of the shaft by being rotated with respect to the adjustment portion of the shaft.*" For at least the same reasons discussed above in relation to claim 1, Applicant respectfully submits that Lemke does not teach or suggest the combination of claim elements as recited in independent claim 38. Additionally, Lemke does not teach or suggest an "*adjustment mechanism comprising: a) a first sleeve having inner threads configured to engage the external threads of the adjustment portion of the shaft . . . and b) a second sleeve having the the fastener engaging portion disposed thereon,*" as recited in claim 38. The casing (104) of Lemke does not have a two-sleeve construction as recited in claim 38.

Thus, Applicant respectfully submits that independent claim 38 patentably defines over Lemke and is allowable. As claims 39 and 41-46 ultimately depend from claim 38, Applicant respectfully submits that claims 39 and 41-46 likewise define over Lemke and are allowable. Applicant's reliance on the patentability of claim 38 for the patentability of claims 39 and 41-46 is not to be construed as Applicant's admission of Examiner's assertions regarding claims 39 and 41-46, or as Applicant's admission that these claims are not novel and unobvious on their own merits.

***Independent Claim 47***

Independent claim 47 of the present application recites, inter alia, "*1) a shaft comprising: . . . c) an adjustment portion comprising external threads . . . 3) an adjustment mechanism mounted on the adjustment portion of the shaft, the adjustment mechanism comprising: a) a first sleeve having inner threads configured to engage the external threads*

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*of the adjustment portion of the shaft such that the adjustment mechanism can move along a longitudinal axis of the shaft by rotating the adjustment mechanism with respect to the adjustment portion of the shaft.”* For at least the same reasons discussed above in relation to claims 1 and 38, Applicant respectfully submits that Lemke does not teach or suggest the combination of claim elements as recited in independent claim 47. Thus, Applicant respectfully submits that independent claim 47 patentably defines over Lemke and is allowable.

### ***Conclusion***

For all the foregoing reasons, Applicant respectfully submits that the application is in condition for allowance. Accordingly, a Notice of Allowance for claims 1, 2, 4-11, 38-39, and 41-47 is respectfully requested.

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